

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7142

MARIO BALLARD,

Petitioner - Appellant,

versus

RED ONION STATE PRISON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-03-388-3)

Submitted: November 21, 2003

Decided: December 8, 2003

Before WILLIAMS and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Mario Ballard, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Mario Ballard seeks to appeal the district court's order dismissing without prejudice his successive petition filed under 28 U.S.C. § 2254 (2000), for lack of jurisdiction and the court's order denying Ballard's Fed. R. Civ. P. 59(e) motion. An appeal may not be taken from the final order in a § 2254 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Ballard has not made the requisite showing. To the extent that Ballard's notice of appeal and appellate brief could be construed as a motion for authorization to file a successive § 2254 motion, we deny authorization. See United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003), cert. denied, ___ U.S. ___, 2003 WL 22232622 (U.S. Nov. 3, 2003) (No. 03-6548).

Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED